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CHAPTER IV

LOWER CANADA

The Province of Lower Canada continued the former law—in criminal matters, the English law, in civil matters the French law. It was not long before the status of the slave became a burning issue. At the first session of the first Parliament¹ of the new Province Lower Canada, Mr. P. L. Panet, a member of the House of Assembly, moved (January 28, 1793) for leave to introduce a bill for the abolition of slavery in the province and leave was unanimously given. On the twenty-sixth of February, Panet introduced a bill pursuant to leave given, and it was read in French and in English. On the eighth of March, Mr. B. Panet proposed the first reading of the bill and it was so read. On the nineteenth of April Mr. P. L. Panet moved that the bill be taken into consideration by the Committee of the Whole on the following Tuesday. The motion was debated and Mr. Debonne moved an amendment to table the bill, which was carried 31 to 3.² There was no further effort toward legislative dealing with slavery until 1799.³

The sale of Negroes continued as indicated by the

¹ Under the Canada Act of 1791, the provinces had each a parliament or legislature, an upper house, the Legislative Council, of nominated members, not fewer than seven in Upper and not fewer than fifteen in Lower Canada, and a lower house, the House of Assembly, sometimes called the House of Commons elected by the people, not fewer than sixteen in Upper and not fewer than fifty in Lower Canada.

² In the sister province a bill to the same effect was more fortunate in the same year a little later. This will be considered in the next chapter.

³ In a work of some authority, Bibaud's *Pantheon Canadien*, page 211, it is said that "Joseph Papineau, Notary Public, Member of the Legislature Assembly for Upper Quebec presented about 1797 a petition of the citizens of Montreal for the abolition of slavery." If that be the case there was nothing done on the petition, but it seems probable that the author refers to the petition of 1799 spoken of later in the Text.

records.⁴ On the twelfth of May, 1794, Francois Boucher de la Périère and Marie Pecaudy de Contrecoeur, his wife, gave liberty to James, their Negro slave, aged 21 years, on condition that he should live in the most remote parts of the upper country. If, however, he left those parts, he should return to slavery. On the fifteenth of December, 1795, Frs. Dumoulin, merchant of Bout de l'île sold to Myer Michaels, merchant, a mulatto named Prince, aged 18 years, for the price of 50 louis.

On the sixteenth of January, 1796 there was found a bill of sale of a female Negro slave named Rose, dated January 15, 1794, the vendor being P. Byrne, the purchaser Simon Meloche, for the price of 360 shillings, deposited with the Notary J. P. Delisle. On the third of September John Shuter by notarial act promised his Negro, Jack, to give him his liberty in six years, if, in the meantime, he served him faithfully. Later, on November 2, 1803, Shuter declared that Jack had fulfilled his obligation, and he accordingly emancipated him. On the thirteenth of September, J. B. Routier, merchant of the Faubourg Saint-Antoine, sold to Louis Charles Foucher, Solicitor-General of His Majesty, Jean Louis, a mulatto, aged 27 years, height 5' 10", the price being 1300 shillings. Routier declared that he had bought Jean Louis as well as his mother at the Island of Saint-Domingue in 1778. On the twenty-third of November César, a free Negro of New London, Connecticut, engaged for ten years as a domestic to Dr. John Aussem, living in the Faubourg Saint Antoine, with a salary of 30 louis in advance. Dr. Aussem reserved to himself the right to sell the services of his domestic to whomsoever he pleased during the ten years.

On the twenty-fifth of May, 1797 Dame Marie-Catherine Tessier, Widow of Antoine Janisse, in his lifetime a voyager,

⁴From Massicotte *ut supra* in *Le Bulletin des Recherches Historiques*, Vol. II, p. 136, it is said: "Une annonce publiée dans la Gazette de Québec vers: cette époque (i. e., 1797) représente un nègre courant a toutes jambes. 'Il est offert une recompense honnête a qui ramènera a son maître marchand de Trois Rivières son esclave fugitif' Ce pauvre diable pensait sans doute que la loi qu'on proposait pourrait pas d'effet retroactif."

liberated her slave Marie Antoine de Pade, an Indian, aged 23 years, in recognition of her services which she had rendered her, and in addition gave her a trousseau. On the twenty-fifth of August Thomas Blaney, gold painter, sold to Thomas John Sullivan, hotel-keeper of Montreal, the Negro Manuel about 33 years old for 36 louis, payable in monthly instalments of three louis each. On the same date and before the same notary, Sullivan promised the slave to liberate him in 5 years, if he served him faithfully. On the twenty-second of November George Westphall, formerly Lieutenant of the 6th Regiment, who owed 20 louis to Richard Dillon, proprietor of the Montreal Hotel in security for payment, delivered to his creditor a mulatress, a slave called Ledy, aged 26 years. She was to work with Mr. Dillon until he was repaid what was owed him by Westphall for principal and interest.

In the year 1793, there came up in the Court of Appeal at Quebec a case involving slavery but nothing was really decided. The plaintiff Jacob Smith sued Peter McFarlane in the Court of Common Pleas for taking away his wife and her clothes and detaining them. McFarlane claimed that Smith's wife was his slave. The Court of Common Pleas gave the plaintiff judgment for £100 and McFarlane appealed to the Court of Appeal. The Court pointed out that it was for McFarlane to prove that Smith's wife was his slave and that he had not done so: but as there had been error in the proceedings the case was sent back to be retried. It is important to notice that the court considered that if McFarlane could prove that Smith's wife was his slave, he had the right to take her away.⁵

A lawsuit also arose over the Negro Manuel (Allen) sold August 25, 1797, to Thomas John Sullivan. When Blaney sold him for £36 Sullivan paid down only half and the balance with interest £30.15.2 was sued for in the Court of King's Bench at Montreal in 1798. Sullivan pleaded that Manuel was not the plaintiff's slave but a free Negro

⁵ Lafontaine *ut supra*, pp. 49-51.

and that he had run away March, 1798, at Montreal where he continued to be: and Sullivan claimed to be reimbursed the £18 which he had paid. On the sixth of October Manuel himself came into the suit and claimed that "by the laws of this land he is not a slave but a freeman." Evidence was given that he had absconded from Sullivan's service alleging as a reason that he was a freeman, "that other blacks were free and that he wanted to be free also." In February, 1799, the court held that no title or right to sell Manuel has been shown and dismissed the action directing the return of the £18.⁶

In 1797 the Imperial Act of 1732 for the sale of Negroes and other hereditaments for debt in the American Plantations was repealed so far as it related to Negroes⁷ but this made no difference in their status. The courts, however, were becoming astute in favor of assisting those claiming freedom. In February, 1798, a certain female Negro slave called Charlotte belonging to Miss Jane Cook left her mistress and refused to return. On information laid she was committed by the magistrates to prison. She sued out a writ of habeas corpus from the Court of King's Bench at Montreal and Chief Justice, James Monk, ordered her release. On this becoming known, the Negroes of the city and district of Montreal became very threatening in their demeanor. Many renounced all service and one woman called Jude who had been bought at Albany in 1795 for £80 by Elias Smith, a merchant of Montreal, left her master and was committed to prison in the same way by the magistrates. Being brought up in the Court of King's Bench at Montreal on habeas corpus, Chief Justice Monk discharged her March 8, 1798 without deciding the question of slavery. The Chief Justice declared that he would set free every Negro, articted apprentice, or domestic servant who should be committed to prison in this way by the

⁶ Lafontaine *ut supra*, pp. 52 & 56.

⁷ For the Act of 1732 (5 George II, c. 7). The repealing Act was (1797) 37 George III, c. 119 (Imp.).

magistrates. But this was because the statute in force at that time⁸ gave power to the magistrates to cause such due correction and punishment to be ministered to an apprentice as they thought fit and this empowered them to commit apprentices to the house of correction as a punishment, but it gave no authority to commit to a common gaol or other prison.

These decisions alarmed the owners of slaves: and a petition from many inhabitants of Montreal was presented to the House of Assembly April 19, 1799, by Joseph Papi-neau. This petition set forth the ordinance of the Intendant Raudot in 1709⁹ the Act of 1732,¹⁰ that of 1790,¹¹ the facts concerning Charlotte, Jude and the other Negroes, the judgments of Chief Justice Monk, and the absence of any house of correction. It prayed that an Act should be passed that until a house of correction should be established every slave, Panis or Negro who should desert the service of his master, might be proceeded against in the same way as apprentices in England, and be committed to the common gaol of the District; and further that no one should aid or receive a deserting slave or that there should be passed a law declaring that there was no slavery in the Province or such other provision concerning slaves should be made as the House should deem convenient.¹² The petition was laid on the table.

In 1799 there was passed an Act providing houses of correction for several districts, but no provision was made

⁸ The Statute of 1562, 5 Elizabeth, c. 4, not repealed until 1814, 54 George III, c. 96 (Imp.).

⁹ See ante, p. 304.

¹⁰ *Ibid.*, p. 305.

¹¹ *Ibid.*, p. 310.

¹² "Ou qu'une loi puisse être passée déclarant qu'il n'y a point d'esclavage dans la Province; ou telle autre provision concernant les esclaves que cette Chambre, dans sa sagesse, jugera convenable." The Act of 1799 providing for houses of correction (really the common goal) was 39 George II, c. 6 (L. C.), and was to be in force for two years. It was amended and continued for four years by the Act (1802) 42 George III, c. 6 (L. C.) and again by (1806) 46 George III, c. 6 (L. C.), until January 1, 1810 when it expired.

concerning slavery. Perhaps the wisdom of this house proved insufficient to devise any "provision convenient."

The next year another petition was brought in by Papineau from certain inhabitants of the District of Montreal saying that doubts had been entertained how far property in Negroes and Panis was sustainable under the laws of the province. They cited Raudot's ordinance, the recognition of slavery for years, and stated that in a recent case the Court of King's Bench at Montreal in discharging a slave of Mr. Fraser's who had been committed to the house of correction by three justices of the peace, had expressed the opinion that the Act of 1797¹³ had repealed all the laws concerning slavery. They asked that the House should pass an act declaring that with certain restrictions slavery did exist in the province and investing the owners with full property in the slave; and that this chamber should also pass such laws and regulations in the matter as should be thought advisable.¹⁴

The petition on motion of Messrs. Papineau and Black was referred to a committee of five, Papineau, Grant, Craigie, Cuthbert and Dumas. The committee reported and Cuthbert introduced on April 30, 1800, a bill to regulate the condition of slaves, to limit the term of their slavery and to prevent further introduction of slavery in the province. The bill passed the second reading and was referred to the Committee of the Whole, but got no further. The next year Cuthbert introduced a similar bill with the same result, and again in 1803. The reason for the failure of these attempts was that any legislation on slavery would in view of the decisions of the courts be reactionary and change for the worse the condition of the slave.

The most celebrated of these decisions was in the case

¹³ See ante, note 7. The effect of this Act was probably not as stated. The slave of Mr. Fraser's was Robin alias Robert to be spoken of *infra*, page.

¹⁴ The two reasons given for the request are the familiar ones. The petitioners had paid large sums for the slaves who had left them and "they are all wholly convinced that that class of men really lazy leading an idle and abandoned life would attempt to commit crime."

of Robin, *alias* Robert, a black. James Fraser, a Loyalist of the colony of New York, became the owner of Robin a Negro man in 1773, before the American Revolution. The colonies were successful and provisional articles of peace were signed November 30, 1782. Congress proclaimed them April 11, 1783 and it was almost inevitable that they would become a permanent and definitive treaty. Article VII provided for the speedy evacuation by the British forces of territory to be allotted to the United States of America "without carrying away any negroes or other property of the American inhabitants." There was allowed full time for everyone who desired to live under the British flag to leave New York. James Fraser made up his mind to go to Nova Scotia and obtained a pass from William Walton, the Magistrate of Police of the city, for his slave Robin and another, Lydia, September 23, 1783.¹⁵ Fraser went to Shelborne, Nova Scotia, and the following year in September he went to "the Island of St. John,"¹⁶ accompanied by Robin who was and acknowledged himself to be Fraser's property. Afterwards Fraser brought him to the Current of Saint Mary near the city of Montreal where Fraser became a farmer. Robin, infected with the pernicious doctrines of freedom then rather prevalent left Fraser, March 19, 1799, and went to live with Richard, a tavern keeper in Montreal. Fraser laid an Information before Charles Blake, a justice of the peace, and January 31, 1800, Charles Blake, Robert Jones and James Dunlop, justices of the peace of the District of Montreal committed Robin to the "Common Gaol and House of Correction at Montreal" with a warrant to Jacob Kuhn "Keeper of His

¹⁵ The definitive treaty was in fact signed September 3, 1783, but not ratified by Congress until January 14, 1784. The armistice had been concluded January 20, 1783. In the definitive treaty, Article VII contains the same provisions as to Negroes as the corresponding article in the preliminary articles.

¹⁶ Isle St. Jean so called from about the end of the sixteenth century until 1798, when it was given the name Prince Edward Island out of compliment to Prince Edward, Duke of Kent (father of Queen Victoria), then commanding the British Forces in North America. The name it still retains.

Majesty's Jail and House of Correction" to receive "a negroman named Robert who refuses to go home to his owner and him safely to keep till he may be discharged or otherwise dealt with according to law."

In the February Term 1800 of the Court of King's Bench for the District of Montreal¹⁷ Mr. A. Perry, his advocate, obtained a writ of habeas corpus and on the tenth of February the black was produced in court. Mr. Perry for the black and Mr. Kerr for James Fraser presented their arguments upon this day and on the thirteenth of February, and after consideration and consultation the court five days later ordered the discharge of Robin alias Robert from his confinement under the warrant.¹⁸

The decision proceeded on the ground that the Act of 1797 which repealed the provision for the sale of Negroes to answer a judgment had revoked all the laws concerning slavery. Remembering that the Act of 1732 was intended to change the common law of England which did not allow the sale of land under a writ of execution, *feri facias*, it should probably be considered that the sole effect of the repeal of the act as regards Negroes was to exempt them from sale under *feri facias*, without affecting their status. And it is well known that slavery continued in the West India Islands and in Upper Canada long after the Act of 1797.

¹⁷ The Judges were James Monk, Chief Justice and Pierre Louis Panet and Isaac Ogden, Puisne Justices.

¹⁸ Lafontaine *ut supra*, pp. 56-63. It has often been said that it was Chief Justice Osgoode who gave the death blow to slavery in Lower Canada. For example, in James P. Taylor's *Cardinal facts of Canadian History*, Toronto, 1899, or p. 88 we find a statement that in 1803, Chief Justice Osgoode in Montreal declared slavery inconsistent with the laws of Canada. But Osgoode became Chief Justice of the Province in July, 1794. Continuing as such Chief Justice, he became Chief of the Court of King's Bench for the District of Quebec later on in the same year on the coming into force of the Act of 1794, 34 George III, c. 6, which erected two Courts of King's Bench one for each District. James Monk became Chief Justice of the Court of King's Bench for the District of Montreal, which position he retained until 1825. Osgoode resigned his position and went to England in 1801 and lived in England until his death in 1824: he was never Chief Justice at Montreal.

The effect of the decisions while not technically abolishing slavery rendered it innocuous. The slave could not be compelled to serve longer than he would, and the burden of slavery was rather on the master who must support his slave than on the slave who might leave his master at will. The legislature refusing to interfere, the law of slavery continued in this state until the year 1833 when the Imperial Parliament passed the celebrated act which forever abolished slavery in British Colonies from and after August 1, 1834.¹⁹

As Lower Canada passed no legislation on slavery, the extradition of fugitives was made impossible and Canada became therefore an asylum for the oppressed in the United States. Before the Act of 1833 there was one instance of a request from the Secretary of State of the United States for the delivery up of a slave. The matter was referred to the Executive Council by Sir James Kempt, the Administrator of the Government.²⁰ The report of the Execu-

¹⁹ One result of these decisions was to induce the escape of Negro slaves from Upper Canada where slavery was lawful to Lower Canada. For example one hears of two of the three slaves whom Captain Allan brought with him into Upper Canada from New Jersey running away to Montreal. The owner pursued them to Montreal and searched for them in vain for ten days. The third slave, a woman, he sold with her child.

The Statute is (1833) 3, 4, William IV, c. 73 (Imp.). One result of this Act is exceedingly curious and to the philosophical lawyer exceedingly interesting. Slaves which had been real estate, as soon as the act was passed ceased to be such, and the benefit to be obtained from their labor until fully enfranchised and the money to be paid by the legislature as compensation for their freedom became personal estate. See the luminous judgment of the Judicial Committee of the Privy Council in *Richard v. Attorney General of Jamaica*, Moore's *Report of Cases in the Judicial Committee* (1848), Vol. 6, p. 381.

In a note on p. 35 of a paper in the *Transactions of the Royal Society of Canada*, 1900, on *La Déclaration de 1732* M. L'Abbé Auguste Gosselin, Litt.D., F.R.S., Can., we read:

“On trouve dans le livre de Mgr. Tanguay *A travers les Registres*, p. 157, une notice sur l'Esclavage au Canada, avec un 'Tableau des familles possédant des esclaves de la nation des Panis' L'esclavage ne fut définitivement aboli par une loi, en Canada, qu'en 1833.”

The learned author does not mean that there was legislation on slavery in Canada in 1833, or that it was Canadian legislation which abolished slavery; for such was not the case.

²⁰ From September 8, 1828, to October 19, 1830.

tive Council shows the view held that "the Law of Canada does not admit a slave to be a subject of property."

At a meeting of the Executive Council of the Province of Lower Canada held at the Council Chamber in the Castle of St. Lewis, on Thursday, June 18, 1829, under Sir James Kempt, the Administrator of the Government, the following proceedings were had:

"Report of a Committee of the whole Council Present The Honble. the Chief Justice in the Chair, Mr. Smith, Mr. DeLery, Mr. Stewart, and Mr. Cochran on Your Excellency's reference of a letter from the American Secretary of State requesting that Paul Vallard accused of having stolen a Mulatto Slave from the State of Illinois may be delivered up to the Government of the United States of America together with the Slave.

"May it please Your Excellency,

"The Committee have proceeded to the consideration of the subject matter of this reference with every wish and disposition to aid the Officers of the Government of the United States of America in the execution of the laws of that dominion and they regret therefore the more that the present application cannot in their opinion be acceded to.

"In the former cases the Committee have acted upon the principle which now seems to be generally understood that whenever a crime has been committed and the perpetrator is punishable according to the *Lex Loci* of the country in which it is committed, the country in which he is found may rightfully aid the police of the country against which the crime was committed in bringing the criminal to justice—and upon this ground have recommended that fugitives from the United States should be delivered up.

"But the Committee conceive that the crimes for which they are authorized to recommend the arrest of individuals who have fled from other Countries must be such as are *mala in se*, and are universally admitted to be crimes in every nation, and that the offence of the individual whose person is demanded must be such as to render him liable to arrest by the law of Canada as well as by the law of the United States.

"The state of slavery is not recognized by the law of Canada nor does the law admit that any man can be the proprietor of another.

“Every slave therefore who comes into the province is immediately free whether he has been brought in by violence or has entered it of his own accord; and his liberty cannot from thenceforth be lawfully infringed without some cause for which the law of Canada has directed an arrest.

“On the other hand, the Individual from whom he has been taken cannot pretend that the slave has been stolen from him in as much as the law of Canada does not admit a slave to be a subject of property.

“All of which is respectfully submitted to Your Excellency’s Wisdom.”²¹

²¹ *Canadian Archives*, State K, p. 406.